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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/560,190

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Gunter Weickert

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02/05/2010

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EXAMINER

TESKIN, FRED M

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

02/05/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/560,190	<b>Applicant(s)</b> WEICKERT, GUNTER	
	<b>Examiner</b> Fred M. Teskin	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-10 is/are allowed.
- 6) ☒ Claim(s) 11-14 and 20 is/are rejected.
- 7) ☒ Claim(s) 15-18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 October 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20091016</u> .  | 6) <input type="checkbox"/> Other: _____                          |

**Detailed Action**

This Office action follows a reply filed on 10/16/2009. Per the reply, claims 1, 6, 11, and 16 have been amended, claim 19 has been cancelled and new claim 20 has been added. Claims 1-18 and 20 are currently pending and under examination herein.

Applicant's arguments, see page 11, filed 10/16/2009, with respect to WO '929 and WO '552 have been fully considered and are persuasive. The rejection of claims 1-19 under 35 U.S.C. 102(b)/103(a) has been withdrawn. Further, the amendments made to claims 6 and 11 and the cancellation of claim 19 have resulted in withdrawal of the rejections under 35 U.S.C. 112 and 35 U.S.C. 101 set forth in the previous action.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20 is indefinite as inaccurate in referring to "Reactor system according to claim 6," when the latter claim is in fact drawn to a process (*cf.*, claim 6, first line). In addition, the language "separation fluidum comprising C<sub>1</sub>-C<sub>12</sub>-alkylene" creates an inconsistency with parent claim 6, wherein the

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corresponding element is defined by use of closed language; i.e., "separation fluidum ... selected from the group consisting of...". Amending claim 20 to recite a "process" according to claim 6, wherein the separation fluidum "is C<sub>1</sub>-C<sub>12</sub>-alkylene" is suggested to overcome this ground of rejection.

Claims 11-14 stand rejected under 35 U.S.C. 102(e) as being anticipated by Covezzi et al (US 7414098).

The rejection is maintained essentially for the reasons of record (see pages 7-8 of prior action) and those which follow.

Applicant's arguments with respect to Covezzi et al have been fully considered and found not to be persuasive.

Concerning claim 11, applicant argues Covezzi et al does not suggest or disclose a reactor system for the catalytic polymerization of olefins comprising a fluidized bed and a moving bed such that the residence time in the fluidized bed and the residence time in the moving bed are independently controlled *by controlling the inflow of polymeric particles into the moving bed or by controlling the outflow of polymer particles out of the moving bed* (Reply, p. 13).

To respond: examiner maintains the structural elements of the reactor system recited in claim 11 are in fact disclosed by Covezzi et al as pointed out in the prior Office action. As to the added limitation to "controlling" the inflow or outflow of polymeric particles into or out of the moving bed, respectively, it is contended that such recitations are directed to an intended manner of using the

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claimed reactor system, which is not germane to the patentability of the apparatus itself. That is, the recited “controlling” parameters do not expressly or impliedly require any structure in addition to that described in Covezzi et al. Thus the patentees’ apparatus for gas-phase catalytic polymerization of olefins is seen to possess the structural elements of the applicant’s reactor system as claimed, any difference resides in the manner in which the system is to be used, and the manner in which an apparatus is to be utilized is not germane to the issue of patentability of the apparatus itself. See MPEP 2115 and *In re Casey*, 152 USPQ 235 (CCPA 1967).

Accordingly, the continued rejection based on Covezzi et al is still deemed tenable and therefore must be maintained.

Claims 1-10, 15-18 and 20 are deemed free of the prior art. Claims 1-10 are allowed. Claims 15-18 are objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claim. Claim 20 would be allowable if amended or rewritten to overcome the rejection under 35 U.S.C. 112 set forth in this Office action.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner F. M. Teskin whose telephone number is (571) 272-1116. The examiner can normally be reached on Monday through Thursday from 7:00 AM - 4:30 PM, and can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached on (571) 272-1114. The appropriate fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Fred M Teskin/

Primary Examiner, Art Unit 1796

FMTeskin/02-01-10